

**211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-23701-2014 (O&M)

Date of decision: 19.01.2023

Avtar Singh

....Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.H.C.Arora Advocate for the petitioner
Mr.Maninder Singh, DAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein is aggrieved of his non-selection pursuant to the recruitment notice dated 08.11.2013 issued for filling up 264 posts of Headmasters in Rashtriya Madhmik Shihiya Authority. The petitioner submitted his application for the aforementioned post as a Physical Education Master under the Scheduled Caste (R&O) category (hereinafter referred to as 'SC (R&O)). As per the recruitment notice, the candidate was required to have the following qualifications:-

“a) Degree of recognized University with B.T or B.Ed or Senior Basic Training with the following experience:-

(i) In case of M.A or M.Sc with M.Ed-Six Years;

(ii) In case of M.A. Or M.Sc with B.T/B.Ed-Seven Years;

(iii) In case of B.A. or B.Sc. or B.Com with B.T or B.Ed-Eight Years

(iv) In case of D.P.Ed or B.P.Ed. Eight year from date physical Education was introduced compulsory in the Schools.

(v) In case of B.A or B.Sci or B.Com with M.Ed-Seven Years.”

2. The petitioner has passed the Bachelor of Physical Education from the Punjabi University, Patiala. This degree in short is called B.PE.

The petitioner was allowed to participate in the selection process and he

secured 39.2380 marks for his academic qualifications, interview and experience. He was not considered for appointment as he did not possess the required qualification as per the recruitment notice. However, during the pendency of the writ petition, an affidavit of Assistant Director, Education, Recruitment Directorate, Department of School Education, Punjab, has been filed stating that on the recommendations of the Punjabi University, Patiala, now the degree of B.PE and B.PED have been considered equal. However, the petitioner is faced with yet another hurdle. As per the affidavit, the marks of the last candidate selected in the merit list under the SC (R&O) category was 39.7854 marks whereas the petitioner was able to secure 39.7380 marks only.

3. Learned counsel representing the petitioner contends that the respondents, after having advertised 66 posts under the SC (R&O) category, have filled only 49 vacancies. He submits that 17 vacancies have still not been filled and the petitioner's claim can be considered by the respondents on the vacant posts.

4. On the other hand, learned State counsel on instructions from Sh.Parminster Singh, Senior Assistant, Directorate, Recruitment Board, Education Department, has submitted that the selection process has been completed and thereafter, various other recruitment notices have also been issued by the Department.

5. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties. It is a well settled law that it is not incumbent upon an employer to fill all the posts, which have been advertised in the recruitment notice. It is not the case of

the petitioner that anyone lower in merit than him has been given appointment by the Department. The recruitment notice was issued in the year 2013, which is approximately 10 years ago. At this stage, it would not be appropriate to exercise the writ jurisdiction, to direct the respondents to appoint the petitioner, particularly when the respondents have decided not to fill up the remaining 17 posts out of the total 66 advertised posts.

6. Learned counsel representing the petitioner further contends that the respondents cannot be permitted to refuse to recruit under a particular category, while filling up the posts advertised for various other vacancies.

7. On the other hand, learned State counsel submits that under the SC (R&O) category, 66 posts were advertised and 49 posts have already been recruited by the Department. Hence, he submits that there is no discrimination or arbitrariness in the appointment by the concerned Department.

8. This Court has considered the submissions of the learned counsel representing the petitioner, however, finds no merit therein. It is the prerogative of the employer to partly or completely fill the vacancies advertised. It is a well settled rule that mere selection does not confer any right on the selected candidate to seek appointment as a matter of right and in this case the petitioner did not even make in the select list. Reliance in this regard can be placed on '*Mani Subrat Jain etc. vs. State of Haryana and others*' 1977 SCC (1) 486.

9. In view of the aforesaid discussion, no ground to issue the writ, as prayed for, is made out.
10. Hence, dismissed.
11. All the pending miscellaneous applications, if any, are also disposed of.

19.01.2023

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE